



# The Congressional Review Act (CRA)

## Overview

**What is the CRA?** The CRA (codified at 5 U.S.C. §§801-808) is a tool Congress can use to overturn certain federal agency actions. The CRA was enacted as part of the Small Business Regulatory Enforcement Fairness Act in 1996. The CRA requires agencies to report the issuance of “rules” to Congress and provides Congress with special procedures, in the form of a joint resolution of disapproval, under which to consider legislation to overturn rules. If a CRA joint resolution of disapproval is approved by both houses of Congress and signed by the President, or if Congress successfully overrides a presidential veto, the rule at issue cannot go into effect or continue in effect.

**What is a rule under the CRA?** The CRA adopts the broadest definition of a “rule” contained in the Administrative Procedure Act (APA), with three exceptions.

### Definition of a “Rule” Under the CRA

The APA definition of a rule (5 U.S.C. §551) is “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.” The CRA excludes three types of actions from this definition (5 U.S.C. §804(3)):

1. Rules of particular applicability;
2. Rules relating to agency management or personnel; and
3. Rules of agency organization, procedure, or practice that do not substantially affect the rights and obligations of non-agency parties.

The CRA applies to final rules, including major rules, non-major rules, and interim final rules. Additionally, the definition is sufficiently broad that it may define as “rules” agency actions that are not subject to traditional notice-and-comment rulemaking, such as guidance documents and policy memoranda.

### How many rules have been overturned using the CRA?

The CRA has been used to overturn a total of 17 rules: 1 in the 107<sup>th</sup> Congress (2001-2002) and 16 in the 115<sup>th</sup> Congress (2017-2018).

## Submission of Rules to Congress

**What submission is required?** The CRA requires agencies to submit their rules to both houses of Congress and the Government Accountability Office (GAO) before they may take effect. The CRA does not specify when an agency must submit a rule. In practice, agencies generally submit rules around the time they are published.

**How do I know if a rule was submitted?** Notice of each chamber’s receipt of a rule submitted under the CRA is published in the “Executive Communications” section of the *Congressional Record*. The Congress.gov website hosts

databases of these executive communications that can be electronically searched. GAO also maintains on its website a database of rules it has received under the CRA.

**What happens if an agency does not submit a rule?** In some cases, an agency has failed to submit an action to Congress, generally because the agency has not considered the action to be a rule under the CRA. On occasion when this has occurred, Members of Congress have asked GAO for a formal opinion as to whether an un-submitted action satisfies the CRA definition of a rule such that the agency would be required to comply with the CRA submission procedures. GAO has issued several opinions of this type at the request of Members. These opinions are available on GAO’s website.

Although the CRA states that a joint resolution of disapproval can be introduced only after a rule is received by Congress, Members have sometimes had success in getting resolutions recognized as eligible for the CRA’s special procedures, even if the agency never submitted the rule to Congress. Specifically, the Senate has developed a practice in which the publication in the *Congressional Record* of a GAO opinion classifying an agency action as a rule can trigger the CRA’s special procedures for a joint resolution of disapproval.

## CRA Joint Resolution of Disapproval Procedures

### What does a joint resolution of disapproval look like?

The CRA stipulates the text for a joint resolution of disapproval. Each CRA joint resolution of disapproval can be used only to invalidate one final rule in its entirety.

### Required Text of a CRA Joint Resolution of Disapproval

“That Congress disapproves the rule submitted by the [agency] relating to [name of the rule], and such rule shall have no force or effect.”

**How is a joint resolution of disapproval filed?** A CRA joint resolution of disapproval is introduced in the same way as any other bill. However, the joint resolution must be introduced within a specific time frame: during a 60-days-of-continuous-session period beginning on the day the rule is received by Congress. As discussed above, if the rule is not submitted, the Senate *may* consider the date a GAO opinion finding the action to be a rule is published in the *Congressional Record* as the beginning of the period. Days-of-continuous-session periods count every calendar day, including weekends and holidays, and exclude only days that either chamber (or both) is gone for more than three days pursuant to an adjournment resolution.

**Are there expedited procedures for a CRA joint resolution of disapproval in the House?** There are no expedited procedures for initial House consideration. The joint resolution would likely be considered in the House under the terms of a closed special rule reported by the Rules Committee. A motion to recommit the joint resolution would be in order in the House, although drafting a motion that complies with the chamber’s germaneness requirement for such motions may be difficult.

**Are there expedited procedures for a CRA joint resolution of disapproval in the Senate?** Yes. When a CRA joint disapproval resolution meets certain criteria, it cannot be filibustered in the Senate. To be eligible for these “fast track” procedures, the Senate must act on a disapproval resolution during a 60-days-of-Senate-session period, which begins on the date the rule has been submitted to Congress and published in the *Federal Register* (if applicable).

*Committee Consideration.* When introduced, a CRA disapproval resolution is referred to committee like other legislation. A committee may choose to report a CRA disapproval resolution, but it may not amend it. After the expiration of a 20-calendar-day period beginning after the rule has been submitted to Congress and published in the *Federal Register* (if applicable), a Senate committee can be discharged of the further consideration of a joint resolution disapproving the rule. This discharge occurs when a discharge petition signed by at least 30 Senators is submitted on the floor.

*Senate Floor Consideration.* Once a CRA joint resolution of disapproval is reported or the relevant Senate committee discharged, a non-debatable motion to proceed to consider the joint disapproval resolution can then be made by any Senator. If called up, the measure would be subject to up to 10 hours of debate before being voted upon. No amendments are permitted. All votes under the CRA are simple majority votes.

**Does a CRA joint resolution of disapproval have to be filed in each chamber?** No. The CRA does not require that “companion” disapproval resolutions be introduced in both the House and the Senate. In some parliamentary circumstances, however, having a companion measure might be advantageous. Having a measure submitted in both the House and the Senate would enable either chamber to act first. Additionally, if the Senate passed a CRA joint resolution of disapproval, the measure would be transmitted to the House and held at the desk there. Because the Senate measure is not referred to House committee, there is no way for House supporters to force consideration of the resolution through a discharge petition. If there is a House companion, on the other hand, a discharge petition could be filed on it, which, if successful, would ultimately result in the Senate legislation being sent to the President.

**What happens if Congress adjourns before the CRA introduction or action periods end?** If, within 60 session (Senate) or legislative (House) days after a rule is submitted, Congress adjourns its session *sine die*, the periods to introduce and act on a disapproval resolution

described above reoccur in their entirety in the next session of Congress, beginning in each chamber on the 15<sup>th</sup> day of session. This “lookback” provision is intended to ensure that Congress will have the full periods contemplated by the act to disapprove a rule regardless of when it is received. The lookback provision may hold particular import in years in which there is a change in party control of the presidency.

## Effect of a CRA Resolution of Disapproval

**What happens when a CRA joint resolution of disapproval is enacted?** A rule that is the subject of an enacted CRA joint resolution of disapproval goes out of effect immediately if the rule had already taken effect when the resolution of disapproval is enacted and “shall be treated as though such rule had never taken effect.” If the rule has not yet gone into effect by the time the resolution of disapproval is enacted, it will not take effect.

In addition, a rule subject to an enacted joint resolution of disapproval “may not be reissued in substantially the same form, and a new rule that is substantially the same ... may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution.” The CRA does not define the scope of “substantially the same” or state who should make such a determination.

**Is judicial review available?** The CRA states that “no determination, finding, action, or omission under this chapter shall be subject to judicial review.” A number of courts have examined this provision. The majority view, adopted by most of these courts, including some federal appeals courts, interprets the provision as unambiguously prohibiting judicial review of *any* question arising under the CRA. Under this view, courts may not void rules based on an agency’s noncompliance with the CRA. The minority view concludes that the provision prevents review of *Congress’s* determinations, findings, actions, or omissions made under the CRA—but does not preclude review of *agency* actions. At least one district court held that it had the power to determine if an agency rule should have been submitted to Congress under the CRA.

## CRS Products

CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis

CRS Report R45248, *The Congressional Review Act: Determining Which “Rules” Must Be Submitted to Congress*, by Valerie C. Brannon and Maeve P. Carey

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